IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 11287 of 2005

Between:

Puramshetti Bapu, s/o Ramanna,
Chintaguda, M.R.Jannaram, Adilabad District.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, Panchayat Raj and Rural

Development (PTSII) Department, rep., by Principal Secretary to

Government, Secretariat Buildings, Hyderabad.
2 The District Collector (Panchayat Wing), Adilabad, Adilabad District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased o to issue a writ, order or direction, more particularly one in the nature of certiorari, to call for the records in G.O.Rt.No.791, Panchayat Raj and Rural development (PTS.II) Department, dated 5-5-2005 confirming the orders of 2nd respondent in proceedings No.690/K4/PTS/2004 dt.18-11-2004 peruse the same and set aside the same and pass such other order or orders as the Hon'ble Court may deem fit and proper.

Counsel for the Petitioner:MR.P.V.NARAYANA RAO

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following :

O R D E R:

The writ petition has been filed by Puramshetti Babu with a prayer to issue a writ, order or direction more particularly one in the nature of Certorari, to call for the records in G.O.Rt.No.791 of Panchayat Raj and Rural Development (PTS-II) Department, dt. 05-05-2005, confirming the orders of 2nd respondent in Proc.No. 690/K4/PTS/2004 dated 18-11-2004 and set aside the same.

The facts of the case as set out in the affidavit filed in support of the writ, in brief, are that the writ petitioner was elected as Sarpanch of Gram Panchayat Committee, Chintaguda, MR: Jannaram, Adilabad District. A report was sent to the District Panchayat Oficer, Adilabad by the Dy.Conservator of Forest & Divisional Forest Officer, Jannaram against the writ petitioner stating that he instigated the villagers in cutting trees in reserve forest by assuring them of home site in reserve forest and collected money from villagers and therefore requested necessary action against the Sarpanch. Basing on the above report, the 2nd respondent-District Collector initiated proceedings against the writ petitioner and placed him under suspension by invoking powers under Section 249(6) of the A.P. Panchayat Raj Act, 1994 (for short 'the Act'). The writ petitioner questioned the order of suspension passed by the 2nd respondent-District Collector by filing an appeal before the Government. His appeal came to be dismissed on 05-05-2002 vide G.O.Rt.No. 791 of Panchayat Raj and Rural Development (PTS-II) Department. Hence the present writ petition.

Heard the learned counsel appearing for the writ petitioner and the learned Government Pleader for Panchayat Raj and Rural Development appearing for the respondents.

Learned Counsel appearing for the writ petitioner submitted that the suspension of the writ petitioner pending enquiry is illegal and arbitrary and therefore, the same is liable to be set aside. He further submitted that the appellate authority-1st respondent some material, which was not furnished to the writ petitioner while disposing of the appeal and it amounts to violation of principles of natural justice. He would further contend that the original authority

and the appellate authority had not applied their mind as to whether further continuance of the writ petition in the office was detrimental to the interest of the concerned Grama Panchayat. In support of his submission, he placed reliance on the decision of Himachal Pradesh High Court in **LEKH RAM VS. STATE OF HIMACHAL PRADESH AND ANOTHER (),** and also the decisions of our High Court in **P.KONDAL REDDY VS. THE DISTRICT COLLECTOR (PANCHAYAT WING) WARANGAL DISTRICT () G.ISRAIL VS. GOVERNMENT OF ANDHRA PRADESH () KALARI NAGABHUSHANA RAO VS. THE COLLECTOR, PANCHAYAT WING, GUNTUR AND OTHERS ()** and also decision of Punjab and Haryana High Court in **MANGE RAM VS. FINANCIAL COMMISSIONER AND SECRETARY TO GOVERNMENT ()**. In the first cited decision, it has been held that mere registration of case could not be pressed as a ground for removal of Pradhan of Gram Panchayat under Section 9(5) of the Himachal Pradesh Panchayat Raj Act (19 of 1970). In the second cited decision, it has been held that even assuming the Sarpanch sold the Government's land, it cannot be construed to be an abuse of power as Sarpanch might be the act does not warranted by him, but does not come within the ambit of abusing power by a Sarpanch. In the third cited decision, it has been held that the power of the Government in appeal are quasi-judicial in nature and it has to exercise the power by itself on a consideration of the material before it and on the representation made by the concerned party with out any influences from outside authority. The Government being a quasi-judicial Tribunal, exercising independent authority should not consult the Collector, whose order is the cause for consideration in appeal and when such consideration militates against the principle that the Government should act as an independent authority. In the fourth cited decision, it has been held that the State Government acting as appellate authority exercising quasi-judicial power has no power to call for para-wise remarks or report on memo of appeal from District Collector whose order is appealed against. In the fifth cited decision, it has been held that merely on registration of criminal case an order of suspension is not to be passed by the authority concerned authomatically. The authority has to apply its mind to the nature of accusation and the charge and then satisfy himself whether it is of a type which can embarrass the person accused of that charge in the discharge of his functions as Panch/Sarpanch or involves turpitude or defect of character.

The learned Government Pleader appearing on behalf of the respondents submitted that the 2nd respondent-District Collector considered the report of the Deputy Conservator of Forests & Divisional Forests Officer and after satisfying himself passed the suspension

order and therefore, the satisfaction of the District Collector cannot be the subject matter to judicial scrutiny in exercise of powers conferred under Article 226 of the Constitution of India.

Before dwelling into the rival contentions, I deem it appropriate to refer Section 249(6) of the Act and it is thus:

> **Section 249(6)**: If the District Collector is of the opinion that a Sarpanch or a Upa-Sarpanch or any member of a Gram Panchayat or the Government are of the opinion that any President or Vice-President or the *"Chairperson"* or *"Vice-Chairperson"* or any member of a Mandal Parishad or Zilla Parishad willfully omitted or refused to carry out the orders of Government for the proper working of the concerned local body or abused his position or the powers vested in him, and that the further continuance of such person in office would be determintal to the interests of the concerned local body or the inhabitants of the village, Mandal or District, the District Collector or as the case may be, Government may, by order, suspend such Sarpanch or Upa-Sarpanch or President or Vice-President or as the case may be, the *"Chairperson"* or *"Vice-Chairperson"* or member from office for a period not exceeding three months, pending investigation into the said charges and action thereon under the foregoing provisions of this section:
>
> Provided that no order under this sub-section shall be passed unless the person concerned has had an opportunity of making a representation against the action proposed:

A show cause notice came to be issued to the writ petitioner
on 14-10-2004. In response to the same, the writ petitioner submitted his explanation to the District Collector. Taking into consideration, the explanation offered by the writ petitioner and the report of the Dy. Conservator of Forests & Divisional Forests Officer, Jannaram, the District Collector proceed to place the writ petitioner under suspension. I deem it appropriate to refer the relevant portion of the suspension order and it reads thus:

> " …In view of the above, the Sarpanch Gram Panchayat, Chintaguda of Jannaram Mandal is hereby placed under suspension under Section 249(6) of the Act with immediate effect. The ordes will be come into force from the date of acknowledgement by the Sarpanch"

It is nowhere stated in the order of suspension that the continuance of the writ petitioner as

Sarpanch would be detrimental to the interest of the concerned Gram Panchayat. The proceedings are initiated against the writ petitioner basing on the registration of the crime by the Deputy Conservator of Forest & Divisional Forest Officer, Jannaram. The District Collector has not formed any opinion as to whether the continuance of the writ petitioner as Sarpanch would be detrimental to the interest of the Gram Panchayat. In such a situation, the only reasonable conclusion is that the District Collector-2nd respondent has not applied his mind in passing the orders.

The Government while exercising the appellate authority has also not stated anything as to whether the continuance of the writ petitioner as Sarpanch would be detrimental to the interest of the concerned Gram Panchayat. Therefore, the order passed by the 2nd respondent-District Collector and the order passed by the 1st respondent in G.O.Rt.No.791 of Panchayat Raj and Rural Development (PTS-II) Department are not in consonance with the provisions of Section 249(6) of the Act and accordingly, the orders passed by the respondents are hereby set aside. However, this order will not preclude the 2nd respondent-District Collector to consider the matter afresh and pass appropriate orders.

Accordingly, the writ petition is allowed. No costs.

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27-06-2005

Mjl/*

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, The Acting the Chief Justice, Monday the twenthy seventh day of June two thousand five.

To

1 The Government of Andhra Pradesh, Panchayat Raj and Rural

Development (PTSII) Department, rep., by Principal Secretary to

Government, Secretariat Buildings, Hyderabad.

2 The District Collector (Panchayat Wing), Adilabad, Adilabad District.

3. 2 CCs to Govt. Pleader For Panchayat Raj & Rural Dev.

4. 2 CD copies.